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N.J. SAVARD, PRESIDENT

May 27, 1994

EX PARTE OR LATE FILED

Honorable Reed E. Hundt, Chairman
Federal Communications Commission
1919 M Street, N.W.
Room 814, Mail Stop Code 0101
Washington DC 20554

Mr. Ralph A. Haller, Chief, Private Radio Bureau
Chairman, Federal Communications Commission PCS Task Force
2025 M Street, N.W.
Room 5002, Mail Stop Code 1700
Washington, DC 20554

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FEDERAL COMMUNICATIONS
COMMISSION
OFFICE OF THE
SECRETARY

MAY 31 '94

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Re: General Docket 90-314 Establishment of Rules, **Broadband Personal Communications Services**

Gentlemen:

As the Commission moves toward final reconsideration of the Broadband PCS rules, I'm sure you have heard from many different sources about various problems associated with the proposed minimum construction requirements. I would like to add our company's voice to those concerns, and provide you with some insight on the likely impact that those requirements will have on small, rural companies like Community Services Telephone Company (CST) if they are not substantially modified on reconsideration.

Our company does not oppose imposition of reasonable construction requirements and benchmark deadlines by which service to certain percentages of area and/or population must be implemented. Such deadlines may be helpful in assuring full frequency utilization and encouraging system development in non-urban areas. While the time frame and percentages will continue to be the subject of substantial debate, we are prepared to live with whatever the Commission ultimately establishes in this regard.

What we cannot tolerate is the possibility that the failure to meet these construction or coverage benchmarks will result in the revocation of the license for the entire franchised market. That is far too great a risk for a company of our size and resources to undertake. Unless this forfeiture approach is modified, CST (and I suspect others) will not participate.

By imposing an absolute and total forfeiture on licensees who fail to meet all of the imposed benchmarks, the Commission requires applicants to wager that there is a reasonable demand for services not yet fully defined, using equipment not yet even developed, at a capital cost

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structure not yet enumerated. Further, risk is likely to be greatest in the rural areas where the cost of serving small population densities creates the greatest challenges.

Of course, any party interested in bidding for a PCS license will be required to make many assumptions about such factors in determining how to value the license in the auction. However, to impose a license forfeiture on winning bidders whose assumptions turn out to be too optimistic or leaving as the only effective alternative to such forfeiture, the potentially uneconomic buildout of systems to meet the benchmark requirements, is simply not an acceptable penalty for incorrectly forecasting long-term market demands.

CST is seriously interested in providing PCS type services here in Maine. Bringing PCS to the rural population which characterizes most of the state of Maine will be a significant challenge. Having established certain assumptions and run several different business cases, it is quite apparent that if CST is successful in obtaining a PCS license for all or any part of the state of Maine independently or as a part of a regional consortium, it will be required to commit significant resources to that system development. We simply cannot and will not enter the PCS auction knowing that it will risk the loss of its entire investment because we may fail to meet long-range benchmarks. Nor can CST risk the possibility that it must make clearly uneconomic capital investments to meet arbitrary benchmarks at some point in the future to protect its sound investment in other areas of the franchise.

In the cellular industry, there were and still are many areas where licensees have chosen not to provide coverage during their five-year fill-in period. These market-driven decisions did not result in a forfeiture of the cellular license; rather, the license holder lost its exclusive rights to serve the unserved territory, and other interested parties were able to apply for licenses to serve those areas that the initial licenses did not. In this fashion, the marketplace, and not the Commission, drove the delivery of services to the consumer. Market definitions were not based on any preconceived licensee construction plan or design.

The Commission has consistently stated that it wants to allow licensees substantial flexibility in designing PCS systems and services to meet consumers needs and desires. The imposition of an absolute and total license forfeiture on licensees who fail to meet even the last of the benchmarks introduces regulatory burdens on system design and construction that may be directly contrary to the marketplace economic forces on which the FCC otherwise wants to rely.

An approach like that used in the cellular industry allows licensees a reasonable time to design and develop a market, restructure service offerings and or construction activity to correlate projections with actual performance. This approach creates significant incentives on licensees to expand their services within their franchised markets as well. A license's winning auction bid will likely be based on maintaining the license for the entire market area for the entire license term and beyond. A licensee who fails to meet any particular benchmark, and thus loses the exclusive right to unserved territory will suffer the loss of value associated with the area that is confiscated and re-auctioned to another licensee.

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CST wants to participate in PCS; we firmly believe that the success of PCS in rural areas depends on the participation of small telephone companies and other local businesses whose primary interest is the development of these rural markets. However, no business planner can be so sure of his assumptions in so new and undefined an area as PCS that it can "guarantee" the ability to develop any given percentage of a market by any given time. Just such a guarantee would be required before CST and similarly situated companies could responsibly risk their resources in a venture that is, as the Commission's rules currently prescribe, "all-or-nothing." As you move toward a final reconsideration of the Broadband PCS service rules, please give strong consideration to revising this construction benchmark penalty, so that CST and other small companies can participate in PCS with reasonably balanced risks and rewards.

While travel to DC is difficult at this time, I would welcome the opportunity to discuss this specific matter with either of you by telephone at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark H. Blake". The signature is fluid and cursive, with a large initial "M" and a stylized "H" and "B".

Mark H. Blake, Treasurer

cc: Honorable Andrew C. Barrett, Commissioner
Honorable James H. Quello, Commissioner
Honorable Rachelle Chong, Commissioner
Honorable Susan Ness, Commissioner
Dr. Robert M. Pepper, Chief, Private Radio Bureau
Dr. Michael L. Katz, Chief Economist
Dr. Thomas P. Stanley, Chief Engineer
Mr. A. Richard Metzger, Esq., Chief Common Carrier Bureau